

U.S. Patent Application Serial No. 10/814,679
Amendment A
Inventors: Roy L. Hood and Gary L. Noedel
Our Reference No. 713629.417

REMARKS

Rejection Under 35 U.S.C. Section 112:

Claim 1 was rejected under 35 U.S.C. Section 112, first paragraph, for failing to comply with the written description requirement. In particular, the term "wall" was objected to for failing to provide support in the specification to describe the outer surface of the projecting element. Claim 6, as originally presented recited: "The article according to claim 1 wherein said base section is formed from a first polymer material, said terminal parts of at least some of said projecting elements are formed from a second polymer material and said base section of said projecting elements having a first polymeric material **at its surface** and a second polymeric material at its core." This is also supported by the Applicants' Patent Specification that recites on Page 3, Lines 15-17: "In many cases the base sections of the projecting elements will have one polymer material **at its surface** and another polymeric material at its core." Therefore, the term "wall" is replaced with the term "surface" which is fully supported by the Applicants' Patent Specification. No new matter has been added. It is respectfully believed that this rejection under 35 U.S.C. Section 112 with respect to Claim 1 is overcome.

Since Claims 2-5 and 7-15 depend from Claim 1 and contain all of the limitations thereof, Claims 2-5 and 7-15 overcome the rejection under 35 U.S.C. Section 112, first paragraph, in the same manner as Claim 1 above.

Also, Claims 1 and 34 was rejected under 35 U.S.C. Section 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter the

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applicant regards as the invention. In particular the Examiner has objected to two different items being referenced as the "base section." Therefore, Claims 1 and 34 are now amended to recite a "...generally planar base..." rather than a "base section." Support for this can be found in the Applicants' Specification on Page 1, Lines 7-9: "Disclosed herein are three-dimensional, unitary, molded, multi-polymer articles with projecting elements extending from one side of a **planar base** and apparatus and methods for making such articles." Also, Applicants' Patent Specification on Page 6, Lines 18-22 recites: "The apparatus of this invention is used to produce a multi-polymer, three dimensional, unitary, thermoplastic, molded article having projections extending from one side of a **base 1** (shown in Figure 1). In a preferred method of operating mold drum 20 is designed to produce extended lengths of grass-like sheet with blade-like elements extending from a ribbed **base 1**." Therefore, no new matter has been added.

Moreover, Claim 1, as well as other dependent claims, is amended to recite a "lower portion" instead of the "base section" for the lower part of the projecting element. Support for this amendment can be found on Page 2, Lines 29-30, and Page 3, Lines 1-2, of the Applicants' Specification as follows: "Figure 2 illustrates another specific embodiment of the multi-color mat according to this invention wherein a **portion** of projecting elements contain the same pigment as the base section and a **portion** of the projecting elements contain a different color pigment from the base section." Also, Page 4, Lines 11-14, of the Applicants' Specification recites the following: "Figure 2 also illustrates another specific embodiment of the multi-color mat according to this invention wherein a **portion** of the terminal parts 3 of blade-like projecting elements contain the same color pigment as base 2 and a portion of the terminal parts 3 of blade-

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like projecting elements contain a different color pigment from base section 2." Therefore, the terminology "portion" is fully disclosed with reference to this aspect of the blade-like projecting element. **As shown in FIGS. 1 and 2, this base section 2 is the lower portion of the projecting elements.** Therefore, no new matter has been added. Therefore, Claims 1 and 34 are now respectfully believed to be clear and definite.

As Claims 2-5 and 7-15 depend from Claim 1, and Claims 35-46 depend from Claim 34 and contain all of the limitations thereof, then Claims 2-5 and 7-15 and Claims 35-46 overcome the rejection under 35 U.S.C. Section 112, second paragraph, in the same manner as Claim 1 and Claim 34 above.

Therefore, it is respectfully believed that Claims 1-5, 7-15 and 34-46 overcome the rejections under 35 U.S.C. Section 112.

Rejection Under 35 U.S.C. Section 102:

Claims 1 and 34 were rejected under 35 U.S.C. Section 102(e) as being unpatentable over Sallee (U.S. Patent No. 5,976,643). Applicant has amended Claim 1 to recite: "A three-dimensional, unitary, molded, polymeric article comprising a generally planar base with a first side and a second side and at least one projecting element with a lower portion and a terminal part, with the at least one projecting element extending from the first side of the generally planar base wherein the lower portion of the at least one projecting element includes a core and a surface wherein the core of the lower portion of the at least one projecting element and the terminal part of the at least one projecting element are formed therethrough of a first polymer

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material and the surface of the lower portion of the at least one projecting element is formed of a second polymer material, **wherein the generally planar base and the at least one projecting element form a unitary, molded article.**" Support for this amendment can be found on Page 3, Lines 7-15, of Applicants' Specification as follows: "This invention provides three-dimensional, **unitary, molded**, multi-polymer articles comprising a generally planar two-dimensional base and a plurality of projecting elements extending from one side of the base, where at least some of the projecting elements are multi-polymer elements." Therefore, no new matter has been added.

The term "unitary" is defined as "single" or "uniform." (See Appendix A).

In marked contrast, Sallee recites: "The invention uses a garnish of tufts of filaments or strips attached to camouflage material, particularly camouflage material for use on mobile equipment, vehicles and personnel. The garnish or tuft is formed from a sheet of flexible, low emissivity material that has been cut into filaments or strips adhesively attached along one uncut longitudinal strip edge portion of the sheet. **The tuft is formed by rolling the strip edge portion longitudinally around one part of a tuft retaining anchor, to form a rolled, adhesive-bound segment attached to the tuft part.** When the rolled strips or filaments are so bound about the tuft retaining anchor part, a tuft is formed therefrom. When all the tuft retaining anchor parts are assembled, the tuft retaining anchor and tuft together constitute the garnish." (Sallee, Abstract, Lines 1-14). **Therefore, Sallee recites a plurality of garnishes each individually anchored to a base rather than a unitary, molded structure.**

It is respectfully believed that all the claim limitations must be considered. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Moreover, it is respectfully believed that

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"...a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F. 2d 628, 631 (Fed. Cir. 1987).

In addition, it is respectfully believed, that the United States Patent Office and the Federal Court of Appeals for the Federal Circuit, has steadfastly and properly held the view that for a proper 35 U.S.C. Section 102 rejection, a single reference, i.e., Sallee, must identically describe each and every element of the rejected claim or else the claim fails as a proper rejection under this statute. In this case, it is respectfully believed that a plurality of separate, discrete garnishes each individually anchored to a base required in Sallee does not anticipate Applicants' Claimed Invention that requires **the generally planar base and the at least one projecting element form a unitary, molded article**. It is respectfully believed that a proper application of a reference against a device described and claimed in a patent application requires broadly that the anticipatory device be substantially the same as the anticipated device in **structure**, function and result.

As a result, Claims 1 and 34 are clearly patentable over Sallee.

Claims 3, 5, 7, 8, 10-12, 15 and 35-40 and 42-44 were also rejected under 35 U.S.C. Section 102 (e) as being anticipated by Sallee. Since Claims 3, 5, 7, 8, 10-12, 15 and 35-40 and 42-44 depend from and contains all of the limitations of Claim 1 and Claim 34, then Claims 3, 5, 7, 8, 10-12, 15 and 35-40 are felt to distinguish from Sallee in the same manner as Claim 1 and Claim 34.

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Claim 1 was rejected under 35 U.S.C. Section 102(b) as being unpatentable over Zuiddam et al. (U.S. Patent No. 4,866,808). As previously stated, Applicants have amended Claim 1 to recite: **"...wherein the generally planar base and the at least one projecting element form a unitary, molded article."**

In marked contrast, Zuiddam requires: "The floor mat of claim 1, further including a center wire inserted in said longitudinal channel of each said U-shaped profile and about which said filaments are wrapped to fix said filaments in said profiles with the distal ends of each said filament extending above the top of said profiles." (Zuiddam, Claim 2, Column 5, Lines 15-18). This is not a unitary, molded article but a floor mat where the filaments are attached with a wire.

Therefore, it is respectfully believed that for a proper 35 U.S.C. Section 102 rejection, each and every element of the rejected claim must be present in the cited reference. Jamesbury Corp. v. Litton Industrial Products, 756 F.2d 1556, 225 U.S.P.Q. 253 (Fed. Cir. 1985). It is respectfully believed that this is the clear and unequivocal view of the Court of Appeals for the Federal Circuit. Atlas Powder v. E.I. DuPont, 750 F.2d 1569, 224 U.S.P.Q. 409 (Fed. Cir. 1984).

Therefore, Claim 1 overcomes the rejection under 35 U.S.C. Section 102(b) as being anticipated by Zuiddam et al.

Claims 9, 10 and 15 were also rejected under 35 U.S.C. Section 102(b) as being anticipated by Zuiddam et al. As Claims 9, 10 and 15 depend from and contains all of the

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limitations of Claim 1, Claims 9, 10 and 15 are felt to distinguish from Zuiddam et al. in the same manner as Claim 1.

Rejection Under 35 U.S.C. Section 103:

Claims 2 and 4 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Sallee (U.S. Patent No. 5,976,643). As Claims 2 and 4 depend from Claim 1 and have all of the limitations of Claim 1, as amended, then Claims 2 and 4 overcome the rejection under 35 U.S.C. Section 103(a) as being unpatentable over Sallee in the same manner Claim 1 overcomes the rejection under 35 U.S.C. Section 102 as being unpatentable over Sallee. Since Claim 1 is not rejected under 35 U.S.C. Section 103 then Claims 2 and 4 cannot be properly rejected under 35 U.S.C. Section 103. **If an independent claim is nonobvious under 35 U.S.C. Section 103(a), then any claim depending therefrom is nonobvious.** In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Since Sallee requires a plurality of garnishes each individually anchored to a base rather than a unitary, molded structure, there is no motivation for someone skilled in the art to use distinct pigments since that person will still not arrive at the Applicants' Invention, as claimed. **There is no logical step-by-step reasoning process that can be developed from the premises furnished by the prior art and a showing of a suggestion, teaching or motivation to combine the prior art references is an essential component of an obviousness holding.** C. R. Bard, Inc. v. M3 Systems, Inc., 48 U.S.P.Q.2d 1225, 1232 (Fed. Cir. 1998).

Therefore, Claims 2 and 4 overcome the rejection under 35 U.S.C. Section 103(a) as being unpatentable over Sallee.

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Claims 9 and 41 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Sallee (U.S. Patent No. 5,976,643) in view of Nesbitt (U.S. Patent No. 5,549,938). As Claims 9 and 41 depend from Claims 1 and 34, respectively, and have all of the limitations of Claims 1 and 34, as amended, then Claims 9 and 41 overcome the rejection under 35 U.S.C. Section 103(a) as being unpatentable over Sallee in view of Nesbitt in the same manner that Claims 1 and 34 overcomes the rejection under 35 U.S.C. Section 102 as being unpatentable over Sallee. Since Claim 1 and Claim 34 are not rejected under 35 U.S.C. Section 103 then Claims 9 and 41 cannot be properly rejected under 35 U.S.C. Section 103. **If an independent claim is nonobvious under 35 U.S.C. Section 103(a), then any claim depending therefrom is nonobvious.** In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Nesbitt discloses: "A removable camouflage primarily for hunting and military vehicles, which removable camouflage is characterized in a first preferred embodiment by a flexible, elastomeric magnetic panel having a selected camouflage pattern provided thereon." (Nesbitt, Abstract, Lines 1-5).

It is respectfully believed that it is improper to apply an "obviousness to try" standard or indulge in hindsight evaluation or reconstruction. See Ecolchem, Inc. v. Southern California Edison Co., 56 U.S.P.Q.2d 1065 (Fed. Cir. 2000). In this case, there is not motivation to add a slip resistant sheet from Nesbitt to the base that holds the plurality of individually anchored garnishes disclosed in Sallee since this still does not arrive at the Applicants' claimed invention of a **generally planar base and the at least one projecting element that form a unitary, molded article**. Most importantly, when applying 35 U.S.C. Section 103(a), the following tenets of patent law must be adhered to: (A) The claimed invention must be considered as a

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whole; (B) **The references must be considered as a whole and must suggest the desirability, and thus, the obviousness of making the combination;** (C) **The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention;** and (D) Reasonable expectation of success is the standard with which obviousness is determined. Hodosh v. Block Drug Co., Inc., 786 F.2d 1136, 1143 n.5, 229 U.S.P.Q. 182, 187 n.5 (Fed. Cir. 1986). It is respectfully believed that there has been no compliance in the present case.

Therefore, it is respectfully believed that Claims 9 and 41 overcome the rejection under 35 U.S.C. Section 103(a) as being unpatentable over Saltee in view of Nesbitt.

Claims 13 and 45 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Saltee (U.S. Patent No. 5,976,643) in view of Rawlinson (U.S. Patent No. 4,329,196).

As Claims 13 and 45 depend from Claims 1 and 34, respectively, and have all of the limitations of Claims 1 and 34, as amended, then Claims 13 and 45 overcome the rejection under 35 U.S.C. Section 103(a) as being unpatentable over Saltee in view of Rawlinson the same manner that Claim 1 and Claim 34 overcomes the rejection under 35 U.S.C. Section 102 as being unpatentable over Saltee. Since Claim 1 and Claim 34 are not rejected under 35 U.S.C. Section 103 then Claims 13 and 45 cannot be properly rejected under 35 U.S.C. Section 103. **If an independent claim is nonobvious under 35 U.S.C. Section 103(a), then any claim depending therefrom is nonobvious.** In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

There is not the slightest hint or suggestion regarding the Applicants' Invention as claimed, of a generally planar base and the at least one projecting element that form a unitary, molded article disclosed in Saltee or Rawlinson and it is only with impermissible

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hindsight vision that this combination is even possible. Moreover, Rawlinson recites: "In the preferred process a grass-like sheet of low density polyethylene is fusion bonded to a rigid high density polyethylene substrate." (Abstract, Lines 7-10). These are two discrete items bonded together and not a unitary, molded article as required in the Applicants' Claims. In determining the differences between the prior art and the claims, the question under 35 U.S.C. Section 103(a) is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 U.S.P.Q. 871 (Fed. Cir. 1983); Schenck v. Nortron Corp., 713 F.2d 782, 218 U.S.P.Q. 698 (Fed. Cir. 1983).

Therefore, it is respectfully believed that Claims 13 and 45 overcome the rejection under 35 U.S.C. Section 103(a) as being unpatentable over Saltee in view of Rawlinson.

Claims 14 and 46 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Saltee (U.S. Patent No. 5,976,643) in view of Sesselmann (U.S. Patent No. 5,790,987). As Claims 14 and 46 depend from Claims 1 and 34, respectively, and have all of the limitations of Claims 1 and 34, as amended, then Claims 14 and 46 overcome the rejection under 35 U.S.C. Section 103(a) as being unpatentable over Saltee in view of Sesselmann the same manner that Claims 1 and 34 overcome the rejection under 35 U.S.C. Section 102 as being unpatentable over Sesselmann. Since Claim 1 and Claim 34 are not rejected under 35 U.S.C. Section 103 then Claims 14 and 46 cannot be properly rejected under 35 U.S.C. Section 103. **If an independent claim is nonobvious under 35 U.S.C. Section 103(a), then any claim depending therefrom is nonobvious.** In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

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Moreover, Sesselman recites: "Articles of clothing adapted to be worn by and to substantially surround at least a portion of a person. The articles of clothing absorb odors emanating from that portion of the person which is substantially surrounded by the clothing preventing odors from escaping to the atmosphere." (Sesselman, Abstract, Lines 1-5). There is not the slightest hint or suggest as to why someone with ordinary skill in the art would combine a reference regarding odor containing clothing with a reference for door mat to attempt to arrive at the Applicants' Invention, as claimed. "There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art." In re Rouffet, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998). In Rouffet, the combination of the references taught every element of the claimed invention; however, without a motivation to combine, a rejection based on a prima facie case of obvious was held improper. The same can be said in this situation. There is no motivation to combine Sallee with Sesselmann.

Therefore, it is respectfully believed that Claims 14 and 46 overcome the rejection under 35 U.S.C. Section 103(a) as being unpatentable over Sallee in view of Sesselmann.

Therefore, it is now believed that all of the pending Claims 1-5, 7-15 and 34-46 in the present application are in condition for allowance. Favorable action and allowance of the Claims is therefore respectfully requested. If any issue regarding the allowability of any of the pending Claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's Amendment, or if the Examiner should


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have any questions regarding the present amendment, it is respectfully requested that the
Examiner please telephone Applicants' undersigned attorney in this regard.

Respectfully submitted,

Dated:

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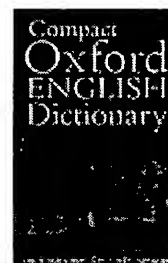
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